

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10, SUBREGION 11

MISSION HOSPITAL

Employer

and

Case 10-RC-257615

NATIONAL NURSES ORGANIZING
COMMITTEE-NORTH CAROLINA / NATIONAL
NURSES UNITED

Petitioner

SECOND ORDER RESCHEDULING HEARING

Given the current situation, the Acting Regional Director postponed the hearing. The hearing in the above-entitled matter is rescheduled to **Monday, April 6, 2020** at a location to be determined (TBD). On April 1, 2020, the hearing may be rescheduled to a later date. The Region will communicate with the parties.

The Statement of Position in this matter must be filed with the Acting Regional Director and served on the parties listed on the petition by no later than **noon** Eastern time on **Friday, April 3, 2020**. The Statement of Position may be e-Filed but, unlike other e-Filed documents, must be filed by noon Eastern time on the due date in order to be timely. If an election agreement is signed by all parties and returned to the Regional Office before the due date of the Statement of Position, the Statement of Position is not required to be filed.

Dated: March 23, 2020



SCOTT C. THOMPSON
ACTING REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 10
233 Peachtree St NE
Harris Tower Ste 1000
Atlanta, GA 30303-1504

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10, SUBREGION 11**

Mission Hospital,

Employer,

and

Case No. 10-RC-257615

**National Nurses Organizing Committee –
North Carolina / National Nurses United**

Petitioner.

_____ /

**EMPLOYER’S MOTION TO POSTPONE THE REPRESENTATION
HEARING AND TO POSTPONE THE DEADLINE FOR SUBMITTING
THE EMPLOYER’S STATEMENT OF POSITION FORM**

Mission Health (the “Employer”) requests the hearing in this matter currently scheduled for April 6, 2020 be postponed. The Employer also requests a postponement of the deadline to file its statement of position form. In support of this motion, Employer shows as follows.

On March 23, 2020, the Acting Regional Director issued an Order stating that “given the current situation,” the representation hearing in this matter is rescheduled to Monday, April 6, 2020 and the deadline for submission of the Employer’s statement of position form is rescheduled to noon on Friday, April 3, 2020. In that Order, the Acting Regional Director stated, “On April 1, 2020, the hearing may be rescheduled to a later date.” The situation has not improved since the Acting Regional Director issued his March 23, 2020 Order, and as a result, the deadlines should be postponed again.

Over the last few days, the Employer has examined a number of potential COVID-19 cases. As of March 29, 2020, the Employer was providing inpatient treatment to two confirmed COVID-19 cases and was caring for a total of 122 patients who are actively under investigation for potential

COVID-19. The Employer anticipates it will continue to experience this volume of cases or greater for several weeks.

The President of the United States has declared a national emergency, and in that emergency declaration, stated that “The spread of COVID-19 within our Nation’s communities threatens to strain our Nation’s healthcare systems ... It is incumbent on hospitals and medical facilities throughout the country to assess their preparedness posture and *be prepared to surge capacity and capability.*” (Emphasis added.) Employees whom the Employer will call to testify at the representation hearing are directly involved in managing the Employer’s response to this national emergency and thus are not available to testify. Proceeding with the hearing on April 6, 2020 as scheduled would impede the Employer’s ability to provide healthcare and would negatively impact patients. For this reason alone, the hearing should be postponed.

The Acting Regional Director also should postpone the hearing due to the difficulty of conducting business at this time in North Carolina. On March 25, 2020, Buncombe County, North Carolina – the county in which the Employer’s primary operations are located – issued a “Stay Home – Stay Safe” Order requiring all businesses, except those designated as “Essential Businesses,” to cease operating. Essential Businesses, which include essential healthcare operations and professional services “when necessary to assist in compliance with legally mandated activities, contractual obligations, and end of life directives,” are permitted to continue to operate, but “to the greatest extent possible,” all Essential Businesses are required to maintain “six-foot social distancing for both employees and the general public.” The Order also provides, “All public or private gatherings of any number of people occurring outside a single household or living unit are prohibited, except as otherwise provided herein.” The Order is effective through April 9, 2020 at 6:00 a.m. A copy of the Buncombe County order is attached as Attachment A.

On March 27, 2020, the Governor of North Carolina issued an Executive Order, attached as Attachment B, which, with limited exceptions, requires individuals to remain in their places of abode and requires most businesses in the state to cease operations. Essential Businesses, which include healthcare operations and professional services, are permitted to continue to operate. Essential businesses are required “to the extent practicable, maintain the Social Distancing Requirements,” which include “maintaining at least six (6) feet distancing from other individuals.” The Governor of North Carolina had previously prohibited mass gatherings of more than 50 persons. The March 27, 2020 Executive Order further limits mass gatherings by reducing the size of the permitted gathering. “Mass gatherings” is now defined as “any event or convening that brings together more than ten (10) persons in a single room or single space at the same time, such as an auditorium, stadium, arena, large conference room, meeting hall, or any other confined indoor or outdoor space.” The Executive Order is effective for thirty days beginning at 5:00 p.m. on March 30, 2020. In summary, Buncombe County and the State of North Carolina have significantly restricted normal business operations and meetings.¹

Federal guidelines also counsel against gatherings of more than 10 people. On March 29, 2020, President Trump stated those guidelines will remain in place until April 30, 2020. Similarly, federal courts are limiting access to their proceedings. The U.S. district court in Asheville has prohibited entry of “persons who have been asked to self-quarantine by any doctor, hospital or health agency [and] persons who have had contact with anyone who has been diagnosed with

¹ The Employer does not contend that either the Buncombe County Stay Home – Stay Safe Order or the North Carolina Governor’s Executive Order prohibits the National Labor Relations Board from conducting a hearing in this matter as scheduled on April 6, 2020. Nonetheless, those orders are instructive as they are consistent with the federal guidelines. In addition, they have impacted the ability to conduct business in North Carolina at this time.

COVID-19.” These restrictions get very close to the kinds of persons who would be witnesses at the pre-election hearing.

In recognition of the national emergency created by COVID-19, fourteen states have postponed their presidential primaries. Countless local elections across the country have also been postponed. That states, counties and cities all over the United States are postponing elections of government officials is clearly evidence of the extraordinary circumstances that warrants postponing the proceedings here concerning an election about a collective bargaining representative.

For the foregoing reasons, the Employer requests the representation hearing and the deadline for submission of its statement of position form be postponed. The Employer further proposes that on April 15, 2020, it will provide an update to the Acting Regional Director on its status of dealing with COVID-19. Based on that status report and other developments in the interim, the Acting Regional Director could then issue an appropriate order on how to proceed.

Submitted this 31st day of March, 2020.



PAUL R. BESHEARS

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271 17th St. N.W., Suite 1900
Atlanta, GA 30363
Telephone: 404-888-3800
Facsimile: 404-888-3863

ATTORNEY FOR THE EMPLOYER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing was served electronically upon the following named individual on this 31st day of March, 2020.

Anthony J. Tucci
atucci@calnurses.org

A handwritten signature in blue ink, appearing to read "Paul R. Beshears", is written above a horizontal line.

Paul R. Beshears

Attachment A

**STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE**

**SUPPLEMENTAL DECLARATION OF A
LOCAL STATE OF EMERGENCY**

STAY HOME – STAY SAFE

WHEREAS, beginning in December 2019, a novel coronavirus, now designated SARS-CoV2 which causes the disease COVID-19, has spread through the world and has now been declared a global pandemic by the World Health Organization; and

WHEREAS, a State of Emergency was declared by the Governor of North Carolina on March 10, 2020;

WHEREAS, a local State of Emergency was declared by Buncombe County Commissioners on March 12, 2020, acknowledging the gravity of the COVID-19 pandemic;

WHEREAS, symptoms of COVID-19 include fever, coughing, and shortness of breath. In some cases the virus has caused death;

WHEREAS, The virus that causes COVID-19 is easily transmitted through person to person contact, especially in group settings, and it is essential that the spread of the virus be slowed to protect the ability of public and private health care providers to handle the influx of new patients and safeguard public health and safety; and

WHEREAS, Because of the risk of the rapid community spread of the virus, and the need to protect the most vulnerable members of the community, this supplemental declaration requires all individuals anywhere in Buncombe County to stay at home, except for certain essential activities and work to provide essential business and government services or perform essential public infrastructure construction, including housing.

NOW THEREFORE, pursuant to the authority contained in Chapter 21, Buncombe County Code of Ordinances and Article 1A of the N.C. Gen. Stat. Chapter 166A, the Board of Commissioners, do hereby declare and order the following:

1. This Order takes effect at 8:00 p.m. on Thursday, March 26, 2020 and will continue through 6:00 a.m. on Thursday, April 9, 2020, subject to the limited exceptions and under the terms and conditions more particularly set forth below;
2. All individuals currently living within Buncombe County are ordered to stay at their place of residence. For the purposes of this Order, residences include hotels, motels, shared rentals, and similar facilities. To the extent individuals are using shared or outdoor spaces, they must at all times as reasonably as possible maintain social distancing of at least six feet from any other person when they are outside their residence. All persons may leave their residences only for Essential Activities, or to provide or perform Essential Governmental Functions, or to operate Essential Businesses, all as defined in Section 9.

3. All businesses operating within Buncombe County, except Essential Businesses as defined below in Section 9.b, are required to cease all activities at facilities located within the County. For clarity, businesses may continue operations consisting exclusively of employees or contractors performing activities at their own residences (i.e., working from home). To the greatest extent possible, all Essential Businesses shall comply with the Social Distancing Guidelines attached, including maintaining six-foot social distancing for both employees and the general public.
4. All public or private gatherings of any number of people occurring outside a single household or living unit are prohibited, except as otherwise provided herein. Nothing in this Order prohibits the gathering of members of a household or living unit.
5. Restaurants with or without drive-in or drive-through services and microbreweries, micro-distilleries, or wineries may only provide take out, delivery, or drive-through services as allowed by law.
6. Religious and worship services may only be provided by video and teleconference. Religious institutions must limit in-person staff to ten (10) people or less when preparing for or conducting video or teleconference services, and all individuals must follow the attached Social Distancing Guidelines including the six-foot social distancing, which are hereby adopted.
7. All visitors travelling to Buncombe County from areas experiencing community transmission of COVID-19 – notably New York State, Washington State and California – must self-quarantine at their residence upon arrival for 14 days before entering the community.
8. All elective medical, surgical, and dental procedures are prohibited anywhere in Buncombe County. Hospitals, ambulatory surgery centers, dental offices, and other medical facilities are directed to identify procedures that are deemed “elective” by assessing which procedures can be postponed or cancelled based on patient risk considering the emergency need for redirection of resources to COVID-19 response.
9. Definitions:
 - a. For purposes of this Order, individuals may leave their residence only to perform any of the following “Essential Activities” :
 - i. **For health and safety.** To engage in activities or perform tasks essential to their health and safety, or to the health and safety of their family or household members (for example, obtaining medical supplies or medication, visiting a health care professional, or obtaining supplies needed to work from home).
 - ii. **For necessary supplies and services.** To obtain necessary services or supplies for themselves and their family or household members, or to deliver those services or supplies to others (for example, food, pet supply, and any other household consumer products, and products necessary to maintain the safety, sanitation, and essential operation of residences).

- iii. **For outdoor activity.** To engage in outdoor activity, provided the individuals comply with social distancing requirements of six feet (for example, walking, biking, hiking, or running).
 - iv. **For work deemed essential.** To perform work providing essential products and services at an Essential Business or to otherwise carry out activities specifically permitted in this Order.
 - v. **To take care of others.** To care for a family member, a neighbor, a friend, or pet in another household.
- b. For purposes of this Declaration, “Essential Businesses” is defined as follows:
- i. **Essential Healthcare Operations.** Healthcare operations, including hospitals, clinics, dentists, pharmacies, pharmaceutical and biotechnology companies, other healthcare facilities, healthcare suppliers, mental health providers, substance use disorder service providers, blood banks, medical research, laboratory services, or any related and/or ancillary healthcare services. Home-based and residential-based care for seniors, adults, or children are also considered healthcare operations. Healthcare operations also includes veterinary care and all health and welfare services provided to animals. This exemption shall be viewed broadly to avoid any impacts to the delivery of healthcare. Healthcare operations do not include fitness and exercise gyms and similar facilities. Healthcare operations do not include elective medical, surgical, and dental procedures as established in accordance with Subsection 8 of this Order.
 - ii. **Essential Government Functions.** All services provided by local governments needed to ensure the continuing operation of the government agencies to provide for the health, safety and welfare of the public. Further, nothing in this order shall prohibit any individual from performing or accessing “Essential Government Functions.” All Essential Government Functions shall be performed in compliance with social distancing requirements of six feet, to the extent possible.
 - iii. **Essential Critical Infrastructure.** Work necessary to the operations and maintenance of the 16 critical infrastructure sectors as identified by the National Cybersecurity and Infrastructure Agency (CISA) including public works construction, residential and commercial construction, airport operations, water, sewer, gas, electrical, oil refining, roads and highways, public transportation, solid waste collection and removal, internet, and telecommunications systems (including the provision of essential global, national, and local infrastructure for computing services, business infrastructure, communications, and web-based services), financial institutions, defense and national security-related operations, essential manufacturing operations provided that they carry out those services or that work in compliance with social distancing requirements of six feet, to the extent

possible. Essential Businesses providing essential infrastructure should implement screening precautions to protect employees and all activity shall be performed in compliance with social distancing guidelines attached.

- iv. Essential Retail. Food service providers, including grocery stores, warehouse stores, big-box stores, bodegas, liquor stores, gas stations and convenience stores, farmers markets that sell food products and household staples. Food cultivation, including farming, fishing, and livestock. Businesses that ship or deliver groceries, food, goods or services directly to customers. Restaurants and other facilities that prepare and serve food, but only for delivery or carry out. Schools and other entities that typically provide free services to students or members of the public on a pick-up and take-away basis only. The restriction of delivery or carry out does not apply to cafes and restaurants located within hospital and medical facilities. Laundromats, dry cleaners, and laundry service providers. Gas stations, auto-supply, auto and bicycle repair, hardware stores, and related facilities. Businesses that supply products needed for people to work from home.
- v. Educational Institutions facilitating distance learning. Educational institutions, including public and private K-12 schools, colleges, and universities, for purposes of facilitating distance learning, performing critical research, or performing essential functions that are needed or appropriate for continuing operations or addressing the public health emergency, provided that social distancing is maintained to the greatest extent practicable. Each educational institution shall determine its essential functions and the employees and/or contractors necessary to the performance of those functions.
- vi. Providers of Basic Necessities to Economically Disadvantaged Populations. Businesses that provide food, shelter, and social services, and other necessities of life for economically disadvantaged or otherwise needy individuals. This includes adult day cares.
- vii. Essential Services Necessary to Maintain Essential Operations of Residences or Other Essential Businesses. Trash and recycling collection, processing and disposal; mail and shipping services; building cleaning, maintenance and security; warehouse/distribution and fulfillment; storage for essential businesses; funeral homes, crematoriums and cemeteries. Plumbers, electricians, exterminators, and other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operations of residences and Essential Businesses. Professional services, such as legal or accounting services, when necessary to assist in compliance with legally mandated activities, contractual obligations, and end of life directives. Businesses that supply other essential businesses with support or supplies needed to operate.
- viii. News Media. Newspapers, television, radio, and other media services.

- ix. Childcare Services. Childcare facilities providing services that enable employees exempted in this Order to work as permitted.
 - x. All Businesses may maintain Minimum Basic Operations. For purposes of this declaration, Minimum Basic Operations include the following, provided that employees comply with Social Distancing Requirements, to the greatest extent feasible, while carrying out such operations:
 - 1. The **minimum** necessary activities to maintain the value of the business's inventory, preserve the condition of the business's physical plant and equipment, ensure security, process payroll and employee benefits, or for related functions.
 - 2. The **minimum** necessary activities to facilitate employees of the business being able to continue work remotely from their residences, for example one employee going to the office for administrative work so that all others may continue to work remotely.
10. Any manufacturer who retools so that a substantial part of their business is for the purpose of manufacturing and producing ventilators, personal protective equipment (PPE), or another good supporting medical response (e.g., sanitizer, disinfectant) is considered an "essential business" under this Order.
11. Grocery stores, supermarkets, warehouse stores, hospitals, and medical facilities are experiencing high levels of demand for a large number of products, requiring more deliveries from manufacturers and distribution centers to serve their customers. Due to the need to deliver products as quickly and efficiently as possible during this critical timeframe, this Order hereby suspends all delivery hour restrictions for transport to or from any entity involved in the selling or distribution of food products, medicine, or medical supplies in Buncombe County for the next 60 days.
12. If someone in a household has tested positive for COVID-19 or has signs and symptoms consistent with COVID-19 (i.e., fever and cough or difficulty breathing) they are instructed to self isolate at home, the other occupants of the household are ordered to quarantine at home following the guidance of public health.
13. Elderly persons and those deemed at high risk of severe illness from COVID-19 are urged to stay in their residence to the greatest extent possible, except as necessary to seek medical care. Those at high risk should seek telemedicine solutions first before travelling to a health care provider. Nothing in this proclamation prevents the Buncombe County Health Director from issuing and enforcing isolation and quarantine orders or executing other duties as required.
14. Long-term care settings (including, but not limited to, skilled nursing facilities, adult care homes, family care homes, and assisted living facilities) are instructed by this order to prohibit non-essential visitors from accessing their facilities unless to provide critical assistance or for end-of-life visitation.

15. All lodging facilities, including campgrounds, with rentals or leases for less than one month in duration shall be closed EXCEPT for work-related accommodations, facilities housing persons experiencing homelessness and any facility being used for isolation and quarantine purposes. Current residents at campgrounds are permitted to stay, but campgrounds should not allow new patrons to enter and establish themselves. Current residents at hotels, motels, and bed and breakfasts and other short-term rentals are permitted to stay, but these facilities should cancel any leisure travel reservations for the duration of this declaration. Any employees who work for a business or organization deemed essential can stay in any lodging.
16. This Order shall be effective until 6:00 a.m. on Thursday April 9, 2020, or until it is either rescinded, superseded, or amended pursuant to applicable law.
17. An interpretive document has been developed to accompany this declaration and provide additional guidance.
18. The County of Buncombe must promptly provide copies of this Order by posting on the Buncombe County website. In addition, the owner, manager, or operator of any facility that is likely to be impacted by this Order is strongly encouraged to post a copy of this Order onsite and to provide a copy to any member of the public asking for a copy.
19. If any subsection, sentence, clause, phrase, or word of this Order or any application of it to any person, structure, gathering, or circumstance is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, then such decision will not affect the validity of the remaining portions or applications of this Order.
20. Failure to comply with this declaration is a Class 2 misdemeanor
21. This Declaration of Local State of Emergency for Buncombe County shall go into effect at 8:00 p.m. on Thursday, March 26, 2020 and will continue through 6:00 a.m. on Thursday, April 9, 2020.

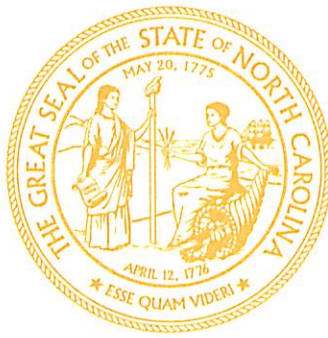
ATTEST :

BOARD OF COMMISSIONERS FOR THE
COUNTY OF BUNCOMBE

Lamar Joyner, Clerk

By: _____
Brownie Newman, Chairman

Attachment B



State of North Carolina

ROY COOPER
GOVERNOR

MARCH 27, 2020

EXECUTIVE ORDER NO. 121

STAY AT HOME ORDER AND STRATEGIC DIRECTIONS FOR NORTH CAROLINA IN RESPONSE TO INCREASING COVID-19 CASES

WHEREAS, on March 10, 2020, the undersigned issued Executive Order No. 116 which declared a State of Emergency to coordinate the State's response and protective actions to address the Coronavirus Disease 2019 (COVID-19) public health emergency and to provide for the health, safety, and welfare of residents and visitors located in North Carolina ("Declaration of a State of Emergency"); and

WHEREAS, on March 11, 2020, the World Health Organization declared COVID-19 a global pandemic; and

WHEREAS, on March 13, 2020, the President of the United States declared the ongoing COVID-19 outbreak a pandemic of sufficient severity and magnitude to warrant an emergency declaration for all states, tribes, territories, and the District of Columbia pursuant to Section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5207 (the "Stafford Act"); and

WHEREAS, on March 13, 2020, the President of the United States pursuant to Sections 201 and 301 of the National Emergencies Act, 50 U.S.C. § 1601, *et seq.* and consistent with Section 1135 of the Social Security Act, as amended (42 U.S.C. § 1320b-5), declared that the COVID-19 pandemic in the United States constitutes a national emergency, retroactive to March 1, 2020; and

WHEREAS, the undersigned has issued Executive Order Nos. 117 – 120 for the purposes of protecting the health, safety and welfare of the people of North Carolina; and

WHEREAS, on March 25, 2020, the President of the United States, pursuant to Section 401 of the Stafford Act, approved a Major Disaster Declaration, FEMA-4487-DR, for the State of North Carolina; and

WHEREAS, on March 27, 2020, the North Carolina Department of Health and Human Services ("NCDHHS") has documented 763 cases of COVID-19 across 60 counties, and has identified the occurrence of widespread community transmission of the virus; and

WHEREAS, hospital administrators and health care providers have expressed concerns that unless the spread of COVID-19 is limited, existing health care facilities may be insufficient to care for those who become sick; and

WHEREAS, to mitigate community spread of COVID-19 and to reduce the burden on the state's health care providers and facilities, it is necessary to limit unnecessary person-to-person contact in workplaces and communities; and

WHEREAS, such limitations on person-to-person contact are reasonably necessary to address the public health risk posed by COVID-19; and

WHEREAS, some areas of the state have seen more rapid and significant spread of COVID-19 than others, and some but not all local authorities have taken steps to address community spread of the illness in their communities; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(c)(i), the undersigned has determined that local control of the emergency is insufficient to assure adequate protection for lives and property of North Carolinians because needed control cannot be imposed locally because not all local authorities have enacted such appropriate ordinances or issued such appropriate declarations restricting the operation of businesses and limiting person-to-person contact in workplaces and communities; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(c)(ii), the undersigned has determined that local control of the emergency is insufficient to assure adequate protection for lives and property of North Carolinians because some but not all local authorities have taken implementing steps under such ordinances or declarations, if issued, in order to effectuate control over the emergency that has arisen; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(c)(iii), the undersigned has determined that local control of the emergency is insufficient to assure adequate protection for lives and property of North Carolinians because the area in which the emergency exists spreads across local jurisdictional boundaries and the legal control measures of the jurisdictions are conflicting or uncoordinated to the extent that efforts to protect life and property are, or unquestionably will be, severely hampered; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(c)(iv), the undersigned has determined that local control of the emergency is insufficient to assure adequate protection of lives and property of North Carolinians because the scale of the emergency is so great that it exceeds the capability of local authorities to cope with it; and

WHEREAS, Executive Order No. 116 invoked the Emergency Management Act, and authorizes the undersigned to exercise the powers and duties set forth therein to direct and aid in the response to, recovery from, and mitigation against emergencies; and

WHEREAS, N.C. Gen. Stat. § 166A-19.10(b)(3) authorizes and empowers the undersigned to delegate any Gubernatorial vested authority under the Emergency Management Act and to provide for the subdelegation of any authority; and

WHEREAS, N.C. Gen. Stat. § 166A-19.30(c) in conjunction with N.C. Gen. Stat. § 166A-19.31(b)(1) authorizes the undersigned to prohibit and restrict the movement of people in public places, including by: (a) imposing a curfew; (b) directing and compelling the voluntary or mandatory evacuation of people from an area; (c) prescribing routes, modes of transportation and destinations in connection with evacuation; (d) controlling the movement of persons within an emergency area; and (e) closing streets, roads, highways, and other areas ordinarily used for vehicular travel, except to the movement of persons necessary for recovery from the emergency; and

WHEREAS, N.C. Gen. Stat. § 166A-19.30(c) in conjunction with N.C. Gen. Stat. § 166A-19.31(b)(2) authorizes the undersigned to prohibit and restrict the operation of offices, business establishments and other places to and from which people may travel or at which they may congregate; and

WHEREAS, N.C. Gen. Stat. § 166A-19.30(c) in conjunction with N.C. Gen. Stat. § 166A-19.31(b)(5) authorizes the undersigned to prohibit and restrict activities which may be reasonably necessary to maintain order and protect lives and property during a state of emergency; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(2), during a Gubernatorially declared State of Emergency, the undersigned has the power to “give such directions to state and local law enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of this Article”.

NOW, THEREFORE, by the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, **IT IS ORDERED**:

Section 1. Stay at Home

1. **Stay at home or place of residence.** All individuals currently in the State of North Carolina are ordered to stay at home, their place of residence, or current place of abode, (hereinafter “residence”) except as allowed in this Executive Order. To the extent individuals are using shared or outdoor spaces when outside their residence, they must at all times and as much as reasonably possible, maintain social distancing of at least six (6) feet from any other person, with the exception of family or household members, consistent with the Social Distancing Requirements set forth in this Executive Order. All persons may leave their homes or place of residence only for Essential Activities, Essential Governmental Operations, or to participate in or access COVID-19 Essential Businesses and Operations, all as defined below.

Individuals experiencing homelessness are exempt from this Executive Order, but are strongly urged to obtain shelter that meets Social Distancing Requirements. Individuals whose residences are unsafe or become unsafe, such as victims of domestic violence, are permitted and urged to leave their home and stay at a safe alternative location.

2. **Prohibited and permitted travel.** Only travel for Essential Activities as defined herein is permitted. People riding on public transit must comply with Social Distancing Requirements to the greatest extent feasible. This Executive Order allows travel into, within, or out of the State to maintain COVID-19 Essential Businesses and Operations and Minimum Basic Operations.
3. **Leaving the home and travel for Essential Activities is permitted.** For purposes of this Executive Order, individuals may leave their residence only to perform any of the following Essential Activities:
 - i. **For health and safety.** To engage in activities or perform tasks essential to their health and safety, or to the health and safety of their family or household members or persons who are unable to or should not leave their home (including, but not limited to, pets), such as, by way of example only and without limitation, seeking emergency services, obtaining medical supplies or medication, or visiting a health care professional or veterinarian.
 - ii. **For necessary supplies and services.** To obtain necessary services or supplies for themselves and their family or household members or persons who are unable or should not leave their home, or to deliver those services or supplies to others, such as, by way of example only and without limitation, groceries and food, household consumer products, supplies they need to work from home, automobile supplies (including sales, parts, supplies, repair and maintenance), and products necessary to maintain the safety, sanitation, and essential operation of residences or places of employment.
 - iii. **For outdoor activity.** To engage in outdoor activity, provided individuals comply with Social Distancing Requirements and Mass Gatherings, as defined below, such as, by way of example and without limitation, walking, hiking, running, golfing, or biking. Individuals may go to public parks and open outdoor recreation areas. However, public playground equipment may increase spread of COVID-19, and therefore shall be closed. These activities are subject to the limitations on events or convenings in Section 3 of this Executive Order.

- iv. **For certain types of work.** To perform work at businesses authorized to remain open under Section 2 of this Executive Order (which, as defined below, includes Healthcare and Public Health Operations, Human Services Operations, Essential Governmental Operations, and Essential Infrastructure Operations) or to otherwise carry out activities specifically permitted in this Executive Order, including Minimum Basic Operations.
- v. **To take care of others.** To care for or assist a family member, friend, or pet in another household, and to transport family members, friends, or pets as allowed by this Executive Order. This includes attending weddings and funerals provided individuals comply with Social Distancing Requirements and Mass Gatherings as set forth below.
- vi. **Place of worship.** Travel to and from a place of worship.
- vii. **To receive goods and services.** To receive goods and services provided by a COVID-19 Essential Business or Operation.
- viii. **Place of residence.** To return to or travel between one's place or places of residence for purposes including, but not limited to, child custody or visitation arrangements.
- ix. **Volunteering.** To volunteer with organizations that provide charitable and social services.

Section 2. COVID-19 Essential Businesses and Operations

In order to slow the spread of COVID-19, it is necessary to reduce the instances where individuals interact with one another in a manner inconsistent with the Social Distancing Requirements set forth below. Many of those interactions occur at work. At the same time, it is necessary that certain businesses, essential to the response to COVID-19, to the infrastructure of the State and nation, and to the day-to-day life of North Carolinians, remain open.

- A. In light of the above considerations, non-essential business and operations must cease. All businesses and operations in the State, except COVID-19 Essential Businesses and Operations as defined below, are required to cease all activities within the State except Minimum Basic Operations, as defined below. For clarity, businesses, including home-based businesses, may also continue operations consisting exclusively of employees or contractors performing activities at their own residences (i.e., working from home).
- B. All COVID-19 Essential Businesses and Operations are directed, to the maximum extent possible, to direct employees to work from home or telework.
- C. For purposes of this Executive Order, a COVID-19 Essential Business and Operation includes the following businesses, not-for-profit organizations and educational institutions.
 - 1. **Businesses that meet Social Distancing Requirements.** Businesses, not-for-profit organizations or educational institutions that conduct operations while maintaining Social Distancing Requirements:
 - a. Between and among its employees; and
 - b. Between and among employees and customers except at the point of sale or purchase.

2. **Businesses operating in CISA identified sectors.** Businesses, not-for-profit organizations or educational institutions operating in the federal critical infrastructure sectors as outlined at <https://www.cisa.gov/identifying-critical-infrastructure-during-covid-19> or any subsequent guidance issued by the U.S. Department of Homeland Security that amends or replaces said guidance.
3. **Healthcare and Public Health Operations.** Healthcare and Public Health Operations includes, but is not limited to: hospitals; clinics; dental offices; pharmacies; laboratories and laboratory service providers; public health entities, including those that compile, model, analyze and communicate public health information; pharmaceutical, pharmacy, medical device and equipment, and biotechnology and agricultural biotechnology companies (including operations, research and development, manufacture, and supply chain); organizations collecting blood, platelets, plasma, and other necessary materials; obstetricians and gynecologists; eye care centers, including those that sell glasses and contact lenses; dietary supplement retailers; naturopathic healthcare providers; home healthcare services providers; local management entities/managed care organizations (LME/MCO); mental health and substance use providers; other healthcare facilities and suppliers and providers of any related and/or ancillary healthcare services; and entities that transport and dispose of medical materials and remains.

Specifically included in Healthcare and Public Health Operations are manufacturers, technicians, logistics, and warehouse operators and distributors of medical equipment, personal protective equipment (PPE), medical gases, pharmaceuticals, blood and blood products, vaccines, testing materials, laboratory supplies, cleaning, sanitizing, disinfecting or sterilization supplies, and tissue and paper towel products.

Healthcare and Public Health Operations also includes veterinary care and all healthcare services provided to animals.

Healthcare and Public Health Operations shall be construed broadly to avoid any impacts to the delivery of healthcare, or public health operations broadly defined. Healthcare and Public Health Operations does not include those businesses ordered to close by Executive Order No. 120.

4. **Human Services Operations.** Human Services Operations includes, but is not limited to: long-term care facilities; child care centers, family child care homes; residential settings and shelters for adults, seniors, children, and/or people with developmental disabilities, intellectual disabilities, substance use disorders, and/or mental illness; transitional facilities; home-based settings to provide services to individuals with physical, intellectual, and/or developmental disabilities, seniors, adults, and children; field offices that provide and help to determine eligibility for basic needs, including food, cash assistance, medical coverage, child care, child support services, vocational services, rehabilitation services; developmental centers; adoption agencies; businesses that provide food, shelter, social services, transportation and other necessities of life for economically disadvantaged individuals, individuals with physical, intellectual, and/or developmental disabilities, or otherwise needy individuals.

Human Services Operations shall be construed broadly to avoid any impacts to the delivery of human services, broadly defined.

5. **Essential Infrastructure Operations.** Essential Infrastructure Operations includes, but is not limited to: food and beverage production, distribution, fulfillment centers, storage facilities; construction (including, but not limited to, construction required in response to this public health emergency, hospital construction, construction of long term care facilities, public works construction, school construction, and essential commercial and housing construction); building and grounds management and maintenance including landscaping; airport operations; operation and maintenance of utilities, including water, sewer, and gas; electrical (including power generation, distribution, and production of raw materials); distribution centers; oil and biofuel refining; roads, highways, railroads, and public transportation; ports; cybersecurity operations; flood control; solid waste and recycling collection and removal; and internet, video and telecommunications systems (including the provision of essential global, national and local infrastructure for computing services, business infrastructure, communications, and web-based services).

(including the provision of essential global, national and local infrastructure for computing services, business infrastructure, communications, and web-based services).

Essential Infrastructure Operations shall be construed broadly to avoid any impacts to essential infrastructure, broadly defined.

6. **Essential Governmental Operations.** Essential Governmental Operations means all services provided by the State or any municipality, township, county, political subdivision, board, commission or agency of government and needed to ensure the continuing operation of the government agencies or to provide for or support the health, safety and welfare of the public, and including contractors performing Essential Governmental Operations. Each government body shall determine its Essential Governmental Operations and identify employees and/or contractors necessary to the performance of those functions.

For purposes of this Executive Order, all first responders, emergency management personnel, emergency dispatchers, legislators, judges, court personnel, jurors and grand jurors, law enforcement and corrections personnel, hazardous materials responders, child protection and child welfare personnel, housing and shelter personnel, military, and other governmental employees working for or to support COVID-19 Essential Businesses and Operations are categorically exempt from this Executive Order.

This Executive Order does not apply to the United States government. Nothing in this Executive Order shall prohibit any individual from performing or accessing Essential Governmental Operations. Nothing in this Executive Order rescinds, amends, or otherwise modifies Section 2 of Executive Order No. 120.

7. **Stores that sell groceries and medicine.** Grocery stores, pharmacies, certified farmers' markets, farm and produce stands, supermarkets, convenience stores, and other establishments engaged in the retail sale of groceries, canned food, dry goods, frozen foods, fresh fruits and vegetables, pet supplies, fresh meats, fish, and poultry, prepared food, alcoholic and nonalcoholic beverages, any other household consumer products (such as cleaning and personal care products), and specifically includes their supply chain and administrative support operations. This includes stores that sell groceries, medicine, including medication not requiring a medical prescription, and also that sell other non-grocery products, and products necessary to maintaining the safety, sanitation, and essential operation of residences and COVID-19 Essential Businesses and Operations.
8. **Food, beverage production and agriculture.** Food and beverage manufacturing, production, processing, and cultivation, including farming, livestock, fishing, forestry, baking, and other production agriculture, including cultivation, marketing, production, and distribution of animals and goods for consumption; and businesses that provide food, shelter, services and other necessities of life for animals, including animal shelters, rescues, shelters, kennels, and adoption facilities.
9. **Organizations that provide charitable and social services.** Businesses as well as religious and secular not-for-profit organizations, including food banks, when providing food, shelter, social services, and other necessities of life for economically disadvantaged or otherwise needy individuals, individuals who need assistance as a result of this emergency, and people with disabilities.
10. **Religious entities.** Religious facilities, entities, groups, gatherings, including funerals. Also, services, counseling, pastoral care, and other activities provided by religious organizations to the members of their faith community. All of these functions are subject to the limitations on events or convenings in Section 3 of this Executive Order.
11. **Media.** Newspapers, television, radio, film, and other media services.
12. **Gas stations and businesses needed for transportation.** Gas stations and auto supply, sales, tire, auto-repair, roadside assistance and towing services, farm equipment, construction equipment, boat repair, and related facilities and bicycle shops and related facilities.

13. **Financial and insurance institutions.** Bank, currency exchanges, consumer lenders, including but not limited to, pawnbrokers, consumer installment lenders and sales finance lenders, credit unions, appraisers, title companies, financial markets, trading and futures exchanges, affiliates of financial institutions, entities that issue bonds, related financial institutions, and institutions selling financial products. Also insurance companies, underwriters, agents, brokers, and related insurance claims and agency services.
14. **Home improvement, hardware and supply stores.** Home improvement, building supply, hardware stores, and businesses that sell building materials and supplies, electrical, plumbing, and heating materials.
15. **Critical trades.** Building and construction tradesmen and tradeswomen, and other trades, including but not limited to, plumbers, electricians, exterminators, cleaning and janitorial staff for commercial and governmental properties, security staff, operating engineers, HVAC, painting, cleaning services, moving and relocation services, landscaping and other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operation of residences and COVID-19 Essential Businesses and Operations. This includes organizations that represent employees.
16. **Mail, post, shipping, logistics, delivery, and pick-up services.** Post offices and other businesses that provide shipping and delivery services, and businesses that ship or deliver groceries, food, alcoholic and non-alcoholic beverages, goods, vehicles or services to end users or through commercial channels.
17. **Educational institutions.** Educational institutions including public and private pre-K-12 schools, colleges, and universities for purposes of facilitating remote learning, performing critical research, or performing essential functions, provided that the Social Distancing Requirements set forth below of this Executive Order are maintained to the greatest extent possible. This Executive Order is consistent with and does not amend or supersede prior Executive Orders regarding the closure of public schools.
18. **Laundry services.** Laundromats, dry cleaners, industrial laundry services, and laundry service providers.
19. **Restaurants for consumption off-premises.** Restaurants and other facilities that prepare and serve food, but only for consumption off-premises, through such means as in-house delivery, third-party delivery, drive-through, curbside pick-up, and carry-out. Schools and other entities that provide free food services to students or members of the public may continue to do so under this Executive Order when the food is provided for carry-out, drive-through or delivery. This Executive Order is consistent with and does not amend or supersede prior COVID-19 related Executive Orders restricting the operations of restaurants and temporarily closing bars.
20. **Supplies to work from home.** Businesses that sell, manufacture, or supply office supply products or other products needed for people to work from home.
21. **Supplies for COVID-19 Essential Businesses and Operations.** Businesses that sell, manufacture, support, or supply other COVID-19 Essential Businesses and Operations with the service or materials necessary to operate, including computers, audio and video electronics, household appliances; payroll processing and related services; IT and telecommunication equipment; elections personnel and election-related equipment supplies; hardware, paint, flat glass, electrical, plumbing and heating material; sanitary equipment; personal hygiene products; food, food additives, ingredients and components; medical and orthopedic equipment; optics and photography equipment; and diagnostics, food and beverages, chemicals, soaps and detergent.
22. **Transportation.** Airlines, taxis, automobile dealers, transportation network providers (such as Uber and Lyft), vehicle rental services, paratransit, trains, marinas, docks, boat storage, and other private, public, and commercial transportation and logistics providers, and public transportation necessary to access COVID-19 Essential Businesses and Operations.

23. **Home-based care and services.** Home-based care for adults, seniors, children, and/or people with developmental disabilities, intellectual disabilities, substance use disorders, and/or mental illness, including caregivers such as nannies who may travel to the child's home to provide care, and other in-home services including meal delivery.
24. **Residential facilities and shelters.** Residential facilities and shelters for adults, seniors, children, pets, and/or people with developmental disabilities, intellectual disabilities, victims of domestic violence, people experiencing homelessness, substance use disorders, and/or mental illness.
25. **Professional services.** Professional services, such as legal services, accounting services, insurance services, professional engineering and architectural services, land surveying services, real estate services (including brokerage, appraisal and title services) and tax preparation services.
26. **Manufacture, distribution, and supply chain for critical products and industries.** Manufacturing companies, distributors, and supply chain companies producing and supplying essential products and services in and for industries such as pharmaceutical, technology, biotechnology, healthcare, chemicals and sanitization, waste pickup and disposal, agriculture, food and beverage, transportation, energy, steel and steel products, petroleum and fuel, mining, construction, communications, as well as products used or commonly sold by other COVID-19 Essential Businesses and Operations.
27. **Defense and military contractors.** Defense and military contractors that develop products, processes, equipment, technology, and related services that serve the United States military, national defense, and national security interests.
28. **Hotels and motels.** Hotels and motels, to the extent used for lodging and delivery or carry-out food services.
29. **Funeral Services.** Funeral, mortuary, cremation, burial, cemetery, and related services. These services are subject to the limitations on events or convenings in Section 3 of this Executive Order.
30. **Additional COVID-19 Essential Retail Businesses.** Additional COVID-19 Essential Retail Businesses are:
 - Electronic retailers that sell or service cell phones, computers, tablets, and other communications technology;
 - Lawn and garden equipment retailers;
 - Book stores that sell educational material;
 - Beer, wine, and liquor stores;
 - Retail functions of gas stations and convenience stores;
 - Retail located within healthcare facilities;
 - Pet and feed stores.

D. All COVID-19 Essential Businesses and Operations shall, to the extent practicable, maintain the Social Distancing Requirements set forth in this Executive Order.

E. "Social Distancing Requirements" as used in this Executive Order means:

- a. maintaining at least six (6) feet distancing from other individuals;
- b. washing hands using soap and water for at least twenty (20) seconds as frequently as possible or the use of hand sanitizer;
- c. regularly cleaning high-touch surfaces;
- d. facilitating online or remote access by customers if possible.

- F. Businesses excluded from the list of COVID-19 Essential Businesses and Operations set forth in this Executive Order who believe that they may be essential may direct requests to be included to the North Carolina Department of Revenue (the “Department”). The Department may grant such request if it determines that it is in the best interest of the State to have the business continue operations in order to properly respond to this COVID-19 pandemic. The Department shall post on its website a point of contact and procedure for businesses seeking to be designated as essential. A business that has made a request to the Department to be included as a COVID-19 Essential Business or Operation may continue to operate until that request is acted upon.
- G. Businesses that are not COVID-19 Essential Businesses and Operations are required to cease all activities within the State except Minimum Basic Operations, as defined below. Businesses that are not COVID-19 Essential Businesses and Operations should comply with Social Distancing Requirements, to the maximum extent possible, when carrying out their Minimum Basic Operations.
- As used in this Executive Order, “Minimum Basic Operations” include the following:
- i) The minimum necessary activities to maintain the value of the business’s inventory, preserve the condition of the business’s physical plant and equipment, ensure security, process payroll and employee benefits, or related functions.
 - ii) The minimum necessary activities to facilitate employees of the business being able to continue to work remotely from their residences.
- H. Notwithstanding any other provision of this Executive Order, the businesses, not-for-profit organizations and educational institutions that were ordered closed by Executive Order Nos. 118 and 120 shall remain closed.

Section 3. Mass Gatherings

For the reasons and pursuant to the authority set forth above:

- A. Section 1(a) of Executive Order Nos. 117 and 120 is rescinded and replaced as follows:
- 1. A mass gathering is defined as any event or convening that brings together more than ten (10) persons in a single room or single space at the same time, such as an auditorium, stadium, arena, large conference room, meeting hall, or any other confined indoor or outdoor space. This includes parades, fairs and festivals.
 - 2. A mass gathering does not include normal operations at airports, bus and train stations, medical facilities, libraries, shopping malls and centers. It also does not include any COVID-19 Essential Business or Operation as defined in this Executive Order.
 - 3. Notwithstanding the above, and in an effort to promote human dignity and limit suffering, funerals are permitted to include no more than fifty (50) persons, while observing Social Distancing Requirements to the extent practicable.
 - 4. Pursuant to N.C. Gen. Stat. §§ 166A-19.30(a)(2), -19.30(c) the provisions of this section shall be enforced by state and local law enforcement officers.

The remainder of Executive Order Nos. 117 and 120 continue to be in effect.

Section 4. Local Orders

- A. The undersigned recognizes that the impact of COVID-19 has been and will likely continue to be different in different parts of North Carolina. Urban areas have seen more rapid and significant spread than most rural areas of the state. As such, the undersigned acknowledges that counties and cities may deem it necessary to adopt ordinances and issue state of emergency declarations which impose restrictions or prohibitions to the extent authorized under North Carolina law, such as on the activity of people and businesses, to a greater degree than in this

Executive Order. To that end, nothing herein is intended to limit or prohibit counties and cities in North Carolina from enacting ordinances and issuing state of emergency declarations which impose greater restrictions or prohibitions to the extent authorized under North Carolina law.

- B. Notwithstanding the language in paragraph (A) of this Section, no county or city ordinance or declaration shall have the effect of restricting or prohibiting COVID-19 Essential Governmental Operations of the State as determined by the State.
- C. Nothing in this Executive Order rescinds, amends, or otherwise modifies Section 2 of Executive Order No. 120.

Section 5. Savings Clause

If any provision of this Executive Order or its application to any person or circumstances is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or application of this Executive Order, which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Executive Order are declared to be severable.

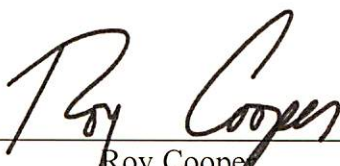
Section 6. Enforcement

- A. Pursuant to N.C. Gen. Stat. § 166A-19.30(a)(2), the provisions of this Executive Order shall be enforced by state and local law enforcement officers.
- B. A violation of this Executive Order may be subject to prosecution pursuant to N.C. Gen. Stat. § 166A-19.30(d), and is punishable as a Class 2 misdemeanor in accordance with N.C. Gen. Stat. § 14-288.20A.
- C. Nothing in this Executive Order shall be construed to preempt or overrule a court order regarding an individual's conduct (e.g., a Domestic Violence Protection Order or similar orders limiting an individual's access to a particular place).

Section 7. Effective Date

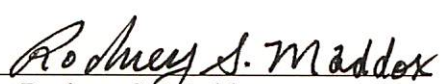
This Executive Order is effective Monday, March 30, 2020, at 5:00pm, and shall remain in effect for thirty (30) days from that date or unless repealed, replaced, or rescinded by another applicable Executive Order. An Executive Order rescinding the Declaration of the State of Emergency will automatically rescind this Executive Order.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 27th day of March in the year of our Lord two thousand and twenty.



Roy Cooper
Governor

ATTEST:



Rodney S. Maddox
Chief Deputy Secretary of State





AFL-CIO

AMERICA'S UNIONS

March 30, 2020

By email to the Executive Secretary at Roxanne.Rothschild@nrlrb.gov

Chairman John Ring
Executive Secretary Roxanne Rothschild
General Counsel Peter Robb
Chief Administrative Law Judge Robert Giannasi
National Labor Relations Board

Re: Resumption of case processing remotely

Dear Chairman Ring, Executive Secretary Rothschild, General Counsel Robb and Chief Judge Giannasi:

We write to follow-up on President Trumka's request that the operations of the National Labor Relations Board be resumed as quickly as possible consistent with the health and safety of Board staff, employees, and employer and labor organization representatives. We believe this is possible according to the following procedures.

Representation Cases

Pre- and Post-Election Hearings

As you know, more than 90% of all representation petitions result in stipulated election agreements. Historically, such agreements have been largely negotiated over the telephone and, more recently, via email as well, and Board agents can and should continue to work out such agreements with the parties as before once the processing of petitions resumes.

With respect to hearings when they are necessary, all pre- and post-election hearings should be conducted via video conference.

The Act provides only that upon the filing of a petition

the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice. Such hearing may be conducted by an officer or employee of the regional office, who shall not make any recommendations with respect thereto. If the Board finds upon the

record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof.

Under the present circumstances, a hearing conducted using video conference technology is certainly “an appropriate hearing.”

Under the regulations, Section 102.66 (a) provides, “Any party shall have the right to appear at any hearing in person, by counsel, or by other representative, to call, examine, and cross-examine. . . .” Read in context, the term “appear at any hearing in person” means a party can appear without representation. It does not mean a party has a right to appear at a face-to-face hearing. The Board should construe the term to be satisfied by permitting parties to appear via video conference when the hearing is being held exclusively by that means.

Section 102.64 provides that hearings “shall be open to the public unless otherwise ordered by the hearing officer.” Given limited capacity on video conferences, the Board should instruct all hearing officers to order that hearings shall not be open to the public although all records from the hearings will be accessible unless specifically subject to a protective order.

Videoconferencing for pre- and post-election hearings is not novel. The General Counsel has recognized that Regional Directors have had the authority to order video testimony in representation cases where appropriate, even over objections by parties, since at least the institution of the pilot video testimony program for representation cases in 2008. *See* OM 08-20. That authorization has continued, and been expanded to ULP hearings. *See* OM 11-42. OM 08-20 provided practical guidance for conducting video testimony. The Board and General Counsel should immediately adapt the practical guidance in OM 08-20 to the current situation, taking into account technological advancements and experience since issuance of OM 08-20, and issue a new memorandum to Regional offices to implement a temporary video conferencing program for all representation case hearings.

Elections

While we recognize that generally applicable Board policy makes manual, in-person balloting the preferred method for conducting elections, given the limitations on public gatherings and the fact that many employees are now working remotely in light of the coronavirus, all elections should be conducted by mail ballot.

In order to properly conduct all elections by mail ballot, the Board should issue a statement declaring that the novel coronavirus outbreak in the United States constitutes an extraordinary circumstance during which in-person elections will raise public health concerns such that Regional Directors should presumptively order the use of mail ballot elections in all representation proceedings.

Under longstanding Board law, reflected in the Board’s Casehandling Manual, a Regional Director may direct the use of a mail ballot election for, *inter alia*, “extraordinary

circumstances.” *San Diego Gas and Elec.*, 325 NLRB 1143, 1145 (1998); CHM 11301.2. In deciding whether to direct a mail ballot election in a particular case, the Regional Director is to consider the desires of the parties, the likely ability of employees to read and understand the mail ballots, the availability of employee addresses, as well as the efficiency interests of the Board. The ultimate decision whether to order a mail ballot election, however, lies within the Regional Director’s discretion, exercised within guidelines set forth by the Board.

The current circumstances present a textbook case of extraordinary circumstances for which use of mail ballot elections is appropriate. President Donald Trump issued a proclamation declaring a national emergency based on the novel coronavirus outbreak on March 13, 2020. Soon thereafter, virtually every U.S. state declared an emergency as well. And, on March 19, the Board issued a statement suspending all representation elections for two weeks, until April 3.

The Board should thus issue a statement declaring that the novel coronavirus outbreak constitutes an extraordinary circumstance and advising Regional Directors that mail ballot elections should be considered presumptively appropriate in all cases. As has always been true, Regional Directors should still consider any countervailing factors raised by the parties in each particular case. However, due to the specific dangers presented by the coronavirus – specifically, the risk to Board employees, voting employees, and other employer personnel of conducting an in-person election, the general need for social distancing at the workplace, and the fact that some members of the voting unit may be absent from the workplace because of the need to quarantine – Regional Directors should apply a strong presumption that a mail ballot election is appropriate in all cases, a presumption that can only be overcome by a fact-based showing that a mail ballot election is impractical in the specific circumstances of the workplace. Given the dangers presented by the coronavirus, the mere preference of one party to hold an in-person election rather than a mail ballot shall be insufficient to overcome the presumption while the emergency circumstances persist.

Unfair Labor Practice Cases

All unfair labor practice case hearings where time is of the essence, including all cases where Section 10(j) relief is sought, should be conducted using video conferencing and hearings in all other cases should so proceed with the consent of all parties.

Section 10(b) of the Act contains language similar to regulation section 102.66(a) discussed above and should be construed similarly. Specifically, Section 10(b) provides in part:

The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint.

The regulations, in section 102.38, similarly provide:

Any party has the right to appear at the hearing in person, by counsel, or by other representative, to call, examine, and cross-examine witnesses, and to introduce

into the record documentary or other evidence, except that the Administrative Law Judge may limit the participation of any party as appropriate

Permitting parties to appear via video conference and to call, examine, and cross-examine witnesses and introduce evidence by that means is clearly consistent with both the statutory and regulatory provisions and principles of due process. As explained above, when read in context, the term “appear at the hearing in person” means appear without a representative. Moreover, the qualifying language “or otherwise” permits the Board to allow appearance through other means consistent with due process. Finally, the phrase “at the place . . . fixed in the complaint” is appropriately read to permit a complaint to fix a virtual place by designating the means of signing into the video conference.

In addition, as in the regulation governing hearings in representation cases, section 102.34 of the regulations provides, “Hearings will be public unless otherwise ordered by the Board or the Administrative Law Judge.” Thus, as explained above, the Board or the ALJ should order the video conference hearings closed to the public for reasons of impracticality while all records thereof will remain available unless subject to a protective order.

Both the Board and the D.C. Circuit have upheld the use of video testimony in unfair labor practice hearings. *See, e.g., E.F. Int’l Language Schools, Inc.*, 363 NLRB No. 20 at 1 n. 1 (Oct. 1, 2015), *enf’d*, *E.F. Int’l Schools, Inc.*, 673 Fed. Appx. 1, 3-4 (D.C.Cir. 2017). In *MPE, Inc.*, 09-CA-084228 (unpub. Board order dated Jan. 29, 2015), the Board overturned an ALJ’s denial of video testimony, and ordered, over objections, that testimony of an incarcerated witness be taken via video, subject to the type of procedural safeguards described in OM 08-20. *See also Oncor Electric Delivery Co.*, 364 NLRB No. 58 (2016) (affirming ALJ’s ruling granting GC motion over respondent’s objection, to allow a former employee to testify in Denver NLRB office instead of coming to Fort Worth). Additionally, OM 11-42 recognizes Regional Directors’ authority to accept video testimony, even when parties object.

Lastly, section 102.35(c) of the Board’s Rules states:

Upon a showing of good cause based on compelling circumstances, and under appropriate safeguards, the taking of video testimony by contemporaneous transmission from a different location may be permitted.

In discussing the “good cause based on compelling circumstances” requirement, the NLRB Bench Book notes that this phrase is identical to the standard set forth in Fed. R. Civ. P. 43. The 1996 Advisory Committee Notes for Rule, quoted in the Bench Book, state that the “most persuasive showings of good cause and compelling circumstances [warranting video testimony] are likely to arise when a witness is unable to attend the trial for unexpected reasons, such as accident or illness, but remains able to testify from a different place.” Bench Book § 12-400. The current global pandemic compellingly fits this description. The Board should make clear that the global pandemic constitutes a good cause based on compelling circumstances under Section 102.35(c), and the General Counsel should instruct Regions to seek hearings via video conference by written motion to ALJs when all parties consent or time is of the essence.

Section 102.35(c)(2) of the regulations provides that

Appropriate safeguards must ensure that the Administrative Law Judge has the ability to assess the witness's credibility and that the parties have a meaningful opportunity to examine and cross-examine the witness, and must include at a minimum measures that ensure that representatives of the parties have the opportunity to be present at the remote location, the judge, participants, and the reporter are able to hear the testimony and observe the witness, the camera view is adjustable to provide a close-up view of counsel and the witness and a panoramic view of the room, exhibits used in the witness's examination are exchanged in advance of the examination, and video technology assistance is available to assist with technical difficulties that arise during the examination.

Under the present circumstances, the Board and ALJs can reasonably interpret the words "different location" and "the remote location" to include the virtual locations where all parties and the judge will be able to simultaneously see and hear one another. Additionally, modern video conferencing and camera technology fulfill each of the remaining, minimum safeguards.

Accordingly, ample authority and modern technology allow for ULP hearings to be held via video conference. The General Counsel should seek parties' consent to so proceed in all pending cases and, even absent such consent, move ALJs to so proceed in cases where time is of the essence, including all cases where Section 10(j) relief is sought. ALJs should grant such motions and the Board should affirm these emergency, temporary measures.

Duration

These procedures should remain in place until the public health crises has waned sufficiently to permit safe resumption of ordinary procedures.

Thank you for your attention to these matters. We are happy to discuss them at any time.

Sincerely,

/s/Craig Becker

Craig Becker

General Counsel

AFL-CIO

815 16th St., N.W.

Washington, D.C. 20006

(202)637-5310

cbecker@aflcio.org



AFL-CIO

AMERICA'S UNIONS

March 30, 2020

By email to the Executive Secretary at Roxanne.Rothschild@nrlb.gov

Chairman John Ring
Executive Secretary Roxanne Rothschild
General Counsel Peter Robb
Chief Administrative Law Judge Robert Giannasi
National Labor Relations Board

Dear Chairman Ring, Executive Secretary Rothschild, General Counsel Robb and Chief Judge Giannasi:

The National Labor Relations Act, adopted in the midst of another national emergency in 1935, gives private sector workers a right to “representatives of their own choosing.” Union representation is more critical than ever in the midst of the current public health and economic crisis with workers facing unsafe conditions, layoffs, and intense uncertainty.

Right now, unions are protecting workers’ safety and ensuring they have the means to get by and support their families. UFCW grocery workers at Stop & Shop recently bargained for hazard pay in recognition of the heightened risk they face, safety protocols, and additional sick leave. BikeShare workers represented by the Transportation Workers’ Union used the bargaining process to secure distancing in shops, staggered shifts and touch screen protocols and to expand the New York State sick leave standard to BikeShare workers in all represented locations. The list goes on.

Nevertheless, the NLRB has suspended all elections, election-related hearings, and unfair labor practice hearings through the first week of April. The Board has stated that newly filed petitions for election will not be set for hearing earlier than April 1 unless the parties agree to a telephonic hearing. Prior to suspending all elections, the Board announced it would proceed to conduct elections by mail ballot, but only if all parties agreed.

The suspension of operations has had a devastating impact on employee rights. For example, National Nurses United, whose members are risking their lives every day across the country, filed for an election among 1,600 registered nurses at Mission Hospital in Asheville, North Carolina on March 6. The proceeding is now postponed indefinitely while hospital management continues to subject nurses to anti-union communications during the pandemic. 850 steelworkers with

health, safety and job loss concerns at an ArcelorMittal site in Alabama have now had their vote in an NLRB election postponed. Over 1,000 HMS Host airport concessions workers in Denver and Orlando, whose jobs put them at extreme risk of exposure, were scheduled to vote in elections for representation by UniteHere the week of March 22, but were deprived of that right. Across the country there are many other examples of brave working people keeping the rest of us alive, safe, fed, etc. -- still on the job without adequate protection and without the means to obtain it through union representation.

So long as the Board is not conducting elections, we call on the Board to demand that all employers similarly suspend their anti-union campaigns.

While fully respecting the right of its own employees to safe working conditions, the NLRB should resume operations as soon as possible in order to again protect the rights of U.S. workers and permit them to exercise the right to choose representation. The NLRB should act with full transparency beginning with direct communications between the Executive Secretary, the General Counsel, and the Chief Administrative Law Judge and the AFL-CIO Office of the General Counsel about all plans so the information can be communicated as quickly as possible to all unions and union counsel.

In this national emergency, the Board must not again make the exercise of employee rights contingent on all parties', i.e., their employers' consent.

The Board has both the authority and the capacity to protect employee rights and it must do so now. The NLRB has taken large steps toward electronic filing and other digital operations in the last decade. Now is the time to fully implement remote operating procedures, including conducting pre- and post-election hearings and unfair labor practice hearings by video conference and all elections by mail ballot.

Thank you for your immediate attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard L. Trumka", with a stylized flourish at the end.

Richard L. Trumka
President
AFL-CIO

Via Electronic Filing

March 31, 2020

Scott C. Thompson, Acting Regional Director
National Labor Relations Board, Region 10
Harris Tower
233 Peachtree Street N.E., Suite 1000
Atlanta, GA 30303-1531

**Re: *Mission Hospital*
 Cases 10-RC-257615
 Opposition to Employer's Motion to Postpone Hearing**

Dear Mr. Thompson:

We are writing to urge the Region to keep the April 6 date for a Representation Hearing on Calendar as stated in the Second Order Rescheduling Hearing and oppose the Employer's Motion to Postpone. In its Second Order, the Region stated, "On April 1, 2020, the hearing may be rescheduled to a second date." The need to proceed with the representational process is pressing.

The nurses at Mission Hospital are facing unrelenting anti-union messages from management. Additionally, they are on the front lines of the COVID-19 crisis, risking their lives to treat patients daily. It is unclear how long this crisis will last; however, nurses deserve to have their voices heard.

NNOC/NNU respects the NLRB's need to protect the safety of its employees. As such, the Union proposes that the Region conduct the Representation Hearing on April 6 via video conference. As you may know, the AFL-CIO sent two letters to NLRB leadership related to remote proceedings during the COVID-19 crisis. *See attached.* During this time of global crisis that requires nurses to continue their work, the Region should construe its rules as permitting video proceedings as stated in the AFL-CIO's letters. Nurses fighting the spread of COVID-19 cannot wait indefinitely to have the NLRB enforce their section 7 rights.

At minimum, the Region should not further postpone the deadline for the Employer to submit its Statement of Position ("SOP"). In its latest Motion To Postpone, the Employer raised justifications to postpone yet again its SOP. The Employer has had nearly a month to draft its SOP, all while having its managers working around the clock to bust the union. Maintaining the deadline for the SOP will allow the parties and the Region to resolve any issues that may be litigated and work towards an election agreement.

We would also like to draw your attention to comments that Jennifer Corbin from your Winston-Salem Office made to the Carolina Public Press about the Union's Representation Petition. She said, "In a noncorona world, without any objection to the unit that we determine is appropriate,

Scott C. Thompson, Acting Regional Director
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there could be an election within six weeks of the hearing.”
<https://carolinapublicpress.org/30085/hca-nurses-scrap-over-union-organizing-during-coronavirus-outbreak/>. As you know, Regions direct elections as earliest as practicable after a representation hearing. And nothing in the rules require an election to be scheduled six weeks from the hearing. Such statements are inaccurate and harmful to unions’ organizing efforts. We ask that the Region be mindful of this when responding to press inquiries.

Thank you very much for your courtesies in this matter.

Respectfully submitted,

NNOC/NNU
LEGAL DEPARTMENT

/s/ Anthony J. Tucci
Anthony J. Tucci
Legal Counsel

cc: Paul R. Beshears, Counsel for Employer
Corey Franklin, Counsel for Employer

attachments

PROOF OF SERVICE

The undersigned hereby declares under penalty of perjury that I am a citizen of the United States, over the age of eighteen years, not a party to the within action and that my business address is 155 Grand Ave., Oakland, California 94612.

On the date below, I served the following document:

OPPOSITION TO EMPLOYER'S MOTION TO POSTPONE HEARING

via Electronic Mail as follows:

Paul Beshears
E-Mail: pbeshears@fordharrison.com

Corey Franklin
E-Mail: cfranklin@fordharrison.com; anbrown@fordharrison.com

Counsel for Employer

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 31, 2020, at Oakland, California.

/s/ Tym Tschneaux
Tym Tschneaux